IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 562 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMAIL HUSSAIN MULARAKH ULLA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 562 of 2001
   MR SAURIN A SHAH for Petitioner No. 1
   MR BD DESAI A.P.P. for Respondent No. 1
2. Criminal Revision Application No. 571 of 2001
   THROUGH JAIL for Petitioner No. 1
   MR BD DESAI A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/01/2002

ORAL JUDGEMENT

1. The petitioner herein was the original accused before the learned Judicial Magistrate, First Class,

Nakhatrana, in Kachchh District for offences punishable under Section 14 of the Foreigners Act, 1946. The learned Magistrate convicted him for the said offence punishable under Section 14 of the said Act by judgment and order dated 6.10.2000 and sentenced him to suffer R.I. for three years. The petitioner was further directed to pay fine of Rs.1500/-. It was further directed that in case of non-payment of fine of Rs.1,500/the petitioner would undergo further S.I. for six months. The offence in question is said to have been committed on 2.1.2000 and the petitioner is in custody since 2.1.2000.

2. Feeling aggrieved by the said judgment and conviction order of the learned Magistrate, the petitioner preferred Criminal Appeal No.30/2000 before the Sessions Court Kachchh at Bhuj unsuccessfully. Hence the petitioner has preferred this Criminal Revision Application. At the hearing, it was contended that the law does not provide for minimum punishment to be inflicted upon the petitioner for the aforesaid offence. It is also contended that the petitioner is in jail since more than two years and, therefore, more than 60% of jail punishment has been undergone by him. It is further contended that a lenient view may be taken against the petitioner and the jail sentence may be appropriately reduced.

3. At the same time, it is also contended that looking to the passport and Visa brought from the Trial Court, it is apparent that the period for stay of the petitioner in India has expired and, therefore, the petitioner would be required to be deported from the limits of India even if he is released from jail. In case the petitioner is not ordered to be released from jail, then at the end of the period of sentence the petitioner will be required to be deported out of India.

4. In above view of the matter, the learned advocate for the petitioner has not pressed this application on merits and he has requested that the sentence awarded may be suitably reduced. Having regard to the facts and circumstances of the case and also the fact that the limit of stay of the petitioner in India has already come to an end and if the petitioner is released very soon, the State Government will have to deport him from the limits of Indian territory. It is noticed from the record that the petitioner is in jail since more than two years, it is found that even before the Trial Court, he was assisted by the advocate provided under the Legal Aid Scheme. It is also noted that even before the Sessions

Court the present petitioner was provided by an advocate under Legal Aid Scheme. This shows the financial condition of the present petitioner.

5. In above view of the matter, I am of the view that this is a fit case wherein the Court should exercise discretionary powers and jurisdiction for the purpose of reducing the sentence awarded by the Trial Court and confirmed by the Sessions Court. It is true that the learned Magistrate had inflicted jail sentence of three years. At the same time, looking to the above facts and circumstances of the case, it may be said that this is a fit case wherein the jail sentence can be appropriately reduced.

6. The learned A.P.P. Mr.B.D. Desai, was also heard on the point and according to his argument the Court may use discretion particularly when it is found that it is a fit case for reducing the sentence.

7. In above view of the matter, I am of the view that the Revision Application should be partly allowed and the sentence awarded should be reduced. The conviction of the petitioner for the offence punishable under Section 14 of the Foreigners Act, recorded by the learned Judicial Magistrate First Class, Nakhatrana at Kachchh and confirmed by the learned Sessions Judge, Kachchh in Criminal Appeal No.30/2000 is hereby confirmed. Further the present petitioner is directed to undergo jail sentence for the period already undergone, instead of sentence awarded by the trial Court. At the same time, the order of payment of fine is ordered to be quashed and set-aside. Therefore the judgment and conviction order of the two Courts below relating to sentence are modified to the above extent and Rule is made absolute accordingly. In above view of the matter, the State Government will be at liberty to deport the present petitioner from the limits of the territory of India in accordance with law. The passport so called for from the concerned Court for perusal, will be returned to the Court concerned.

Direct Service is permitted.

25.1.2002 (D.P. Buch, J.)

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